

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8203 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ARJANBHAI KARSANBHAI

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT PATEL for Petitioner
Mr. Sudhansu S. Patel, AGP
for Respondents No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 22/09/2000

ORAL JUDGEMENT

Being aggrieved by the order dated 8th September 1995 passed by the Deputy Secretary, Food & Civil Supplies Department, State of Gujarat, Gandhinagar, forfeiting 50% of the goods to the tune of Rs. 16,300/=, the petitioner has preferred this petition under Article 226 of the Constitution of India calling in question the legality and validity thereof.

2. The facts giving rise to the present petition shortly stated are that the petitioner taking the loan from the District Industries Centre runs his Tel-ghani at Samadhiyala in Upleta Taluka for the last several years. On 15th July 1993, his premises were inspected by the Mamlatdar. The Mamlatdar found that petitioner had not taken the licence to run the Tel-ghani and had also not maintained the account books as well as the registers. He therefore found that the petitioner had committed the breach of the Gujarat Essential Articles (Licensing Control and Stock Declaration) Order, 1981 (for short, 'the Order'). He therefore made a report to his higher authorities. A show cause notice was issued on 12th August 1993 calling upon the petitioner as to why necessary action in law against him for the breach he had committed be not taken. The petitioner filed his written statement containing in short that when his daily production was not exceeding 150 Kgms., the order in question was not applicable and therefore he was not bound to take the licence and maintain the books of accounts as alleged against him. However, the District Supply Officer on 17th September 1993 passed the order and forfeited 50% of the stock the petitioner was having at that time on hand. The value of the goods forfeited was Rs. 16,300/=. The groundnut oil, groundnuts and groundnut seeds were seized. Being aggrieved by the order of the District Supply Officer, the petitioner preferred the Appeal No. 563 of 1993 which also came to be dismissed by the Deputy Secretary, Food & Civil Supplies Department on 8th September 1995. It is against that order, the present petition is filed calling in question the legality and validity of both the orders passed.

3. Assailing the orders, the learned advocate representing the petitioner submits that the impugned order is arbitrary and perverse because the ORDER in question was not at all applicable. Though such fact was brought to the notice of both the authorities, both the authorities ignoring the said facts passed the impugned order. The learned A.G.P. in reply submits that the orders passed are quite in consonance with the provisions of law and there is no reason to interfere with the same.

4. Whether the order in question is applicable to the Tel-ghani being run by the petitioner is the only crucial point raised in the petition. It is the admitted fact that the daily production of the petitioner's Tel-ghani has never exceeded 150 Kgms., of oil and in that regard on 15th September 1994 the Section Officer, Food & Civil Supplies Department, State of Gujarat, had

issued the certificate making it clear that the petitioner was not required to take any licence as the production of the ghani was below 150 Kgms a day.

5. From time to time necessary notifications exempting certain production units were issued and one such notification which is applicable to the facts of the present case was issued on 31st January 1986, the number thereof is GTH-86-4-ECA-881-5362-B which was published in the Gazette Part 4-A of the said date. As per that notification, the Government has exempted the producer known as 'Ghaniwala' whose daily production does not exceed 150 Kgs. of oil from the operation of the provisions of Clause 3 of the Order with effect from 1st January 1986. This notification in clear terms make it clear that those ghaniwalas who are producing less than 150 Kgms., of oil per day are exempted from the operation of the order and therefore they are not bound to act according to the different provisions of the Order.

6. The petitioner was never having the production of more than 150 Kgs., of oil, and that is the admitted fact before me. In view of such fact, the notification in question is applicable. The petitioner was therefore exempted from the Order in question. He was therefore not at all bound to take the licence or maintain the registers and other records as per the provisions of the Order. When that is so, he cannot be said to have committed the breach of any of the provisions of the Order. The impugned orders passed in this case despite such position should be termed arbitrary and unreasonable. The same are, therefore, required to be quashed exercising the writ jurisdiction.

7. For the aforesaid reasons, the application is allowed. The order dated 17th September 1993 passed by the District Supply Officer, Rajkot (Annexure 'B') and another order dated 8th September 1995 passed by the Deputy Secretary, Food & Civil Supplies Department (Annexure 'A') are hereby quashed and set aside. Rule is accordingly made absolute.

rmr. -----